

Steven A. Kraemer, OSB No. 882476

E-mail: skraemer@cisoregon.org

David C. Lewis, OSB No. 953348

E-mail: dlewis@cisoregon.org

Lauren E. Nweze, OSB No. 145218

E-mail: lweze@cisoregon.org

KRAEMER & LEWIS

P.O. Box 1469

Lake Oswego, OR 97035

Telephone: (503)763-3875

Facsimile: (503) 763-3901

Of Attorneys for Defendants Columbia County,
Butch Guess, David Peabody, Shawn McQuiddy
and Brian Pixley

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MISTY FOX, an individual,

Plaintiff,

v.

COLUMBIA COUNTY, a political
subdivision of the state of Oregon, **TCB
SECURITY SERVICES,
INCORPORATED**, an Oregon domestic
corporation, **BUTCH GUESS**, an individual,
DAVID PEABODY, in his official and
individual capacities, **SHAWN MCQUIDDY**,
in his individual and official capacities,
BRIAN PIXLEY, in his official and
individual capacities,

Defendants.

No. 3:20-cv-1154-HZ

**DEFENDANTS COLUMBIA COUNTY,
BUTCH GUESS, DAVID PEABODY,
SHAWN MCQUIDDY AND BRIAN
PIXLEY'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT**

Demand for Jury Trial

Defendants Columbia County, Butch Guess, David Peabody, Shawn McQuiddy, and Brian Pixley (hereinafter “Columbia County Defendants”) deny each and every allegation of plaintiff’s Complaint, as except as expressly admitted in this Answer.

1.

Columbia County Defendants admit jurisdiction and venue are proper based on the facts alleged in the Complaint and that, so long as the federal claims remain, this court has supplemental jurisdiction.

2.

Admit defendant Columbia County is a political subdivision of the State of Oregon; that defendant David Peabody was employed by Columbia County and was all times acting within the course and scope of his employment and under color of law; that defendant Shawn McQuiddy was employed by Columbia County and was at all times acting in the course and scope of his employment and under color of law; that defendant Brian Pixley was employed by Columbia County, and was at all times acting within the course and scope of his employment and under color of law; that defendant Butch Guess was a volunteer appointed to the Columbia County Fair Board by Columbia County and was acting within the course and scope of his volunteer position at all material times alleged in the Complaint.

3.

Admit that defendant Columbia County duly appointed the Columbia County Fair Board; that the Fair Board operates and manages the Columbia County Fair and the fairground property; and that the fairground property is owned by defendant Columbia County.

4.

Admit that defendant TCB Security Services Inc. was an independent contractor who contracted with defendant Columbia County, through the Fair Board, to provide security services at the Columbia County Fair at all material times alleged in the Complaint.

///

///

5.

Admit that the Fair Board approved rules and regulations prohibiting firearms and weapons on fairground property during the Columbia County Fair; that those rules and regulations were in effect during the 2018 Columbia County Fair; and that they were publicly posted on signs at the fairgrounds.

6.

Admit that on or before July 19, 2018, plaintiff was seen by defendant TCB security officers carrying a firearm while attending the Columbia County Fair on the fairground property in violation of the fairground rules and regulations; that they reported her to defendant Guess; that defendant Guess and plaintiff had a conversation wherein defendant Guess explained to plaintiff the fairground rules prohibiting carrying of weapons on fairground property during the Columbia County Fair; that he asked her to take her weapon out of the fairgrounds and lock it in her car; and that plaintiff agreed to do so.

7.

Admit that on or about July 21, 2018, at approximately 9:00 p.m., defendant TCB security officers again observed plaintiff carrying a semi automatic handgun on her hip in violation of the fairground rules and regulations; and those security officers explained to plaintiff she was not allowed to carry her weapon during the Columbia County Fair; and that in response plaintiff began aggressively arguing with them.

8.

Admit TCB security officers ceased contact with plaintiff and contacted Columbia County Sheriff's Office deputies who were at the fairgrounds; and that Columbia County Sheriff's Office deputies, defendants McQuiddy and Peabody, made contact with plaintiff.

9.

Admit defendant Peabody confirmed with plaintiff that she had a firearm which was now concealed and asked plaintiff for her concealed weapon permit; that plaintiff provided a concealed weapon permit; that defendant Peabody then contacted defendant Pixley who confirmed there were

no firearms allowed at the Columbia County Fair per the fairground rules; and that plaintiff could be given the option of locking her weapon in her vehicle and returning to the fairgrounds or leaving the fairgrounds.

10.

Admit defendant Peabody explained to plaintiff that firearms were not allowed at the Columbia County Fair per the fairground rules; that she could either return to her vehicle and secure the weapon and return to the fair, or leave the fair; and that plaintiff continued to be argumentative and refused to secure her weapon in her vehicle.

11.

Admit that plaintiff was escorted into the fair rodeo grounds so she could gather her backpack and tell her family; that she was warned if she continued to be raise her voice, she would be committing disorderly conduct; that she was then escorted to the main gate; and that during the entire time plaintiff continued to loudly argue with the deputies and call attention to herself and the deputies.

12.

Admit that at the main gate plaintiff was again repeatedly told that she could secure her weapon in her vehicle and return to fair, but would not be allowed back inside with her weapon; that plaintiff remained loud and argumentative at the gate in public calling attention to herself and the deputies; and that defendant Peabody told her she could bring the matter up with the County Board of Commissioners or the Fair Board, but that she could not come back into the fair with her weapon that night.

13.

Admit that at the fairground gate, defendant Guess also attempted to have a conversation with plaintiff and explain the fairground rules to her, but that plaintiff remained loudly argumentative. Further admit that plaintiff and defendant Guess are neighbors to one another.

///

///

14.

Admit that on or about July 22, 2018 at approximately 9:30 a.m., plaintiff returned to the main gate of the Columbia County Fairgrounds; that she publicly and aggressively confronted defendant TCB security officers about the fairground rules; and that she demanded to see their DPSST Private Security Certification Cards.

15.

Admit that plaintiff complained to the Columbia County Sheriff; that on or about July 24, 2018, the Columbia County Sheriff wrote plaintiff a letter explaining and apologizing; and that letter speaks for itself. Deny that a copy of the letter is attached as Exhibit A to plaintiff's Complaint.

16.

Except as expressly admitted above, Columbia County Defendants deny each and every remaining allegation of plaintiff's Complaint, either because they are untrue, or because they are opinions or conclusions rather than allegations of fact, or because they lack sufficient information or belief as to their accuracy at this time.

FOR A FURTHER ANSWER AND BY WAY OF FIRST AFFIRMATIVE DEFENSE,
Columbia County Defendants allege:

17.

Plaintiff fails to state claims for relief.

FOR A FURTHER ANSWER AND BY WAY OF SECOND AFFIRMATIVE DEFENSE,
Columbia County Defendants allege:

18.

Defendants Guess, Peabody, McQuiddy and Pixley are entitled to qualified immunity.

FOR A FURTHER ANSWER AND BY WAY OF THIRD AFFIRMATIVE DEFENSE,
Columbia County Defendants allege:

19.

Plaintiff failed to mitigate her damages.

FOR A FURTHER ANSWER AND BY WAY OF FOURTH AFFIRMATIVE DEFENSE,
Columbia County Defendants allege:

20.

Plaintiff's state law claims are subject to the terms, conditions, limitations, and immunities, including damage limitations and party limitations, as set forth in the Oregon Tort Claims Act.

FOR A FURTHER ANSWER AND BY WAY OF FIFTH AFFIRMATIVE DEFENSE,
Columbia County Defendants allege:

21.

Columbia County Defendants' actions toward plaintiff were based on legitimate, objectively reasonable, non-retaliatory, and non-discriminatory reasons and motives and were not based on any improper motive or improper purpose.

WHEREFORE, having fully answered plaintiff's Complaint, Columbia County Defendants pray for dismissal of plaintiff's claims with prejudice, entry of judgment in their favor, and an award of their costs, disbursements and reasonable attorney fees incurred herein.

Columbia County Defendants demand trial by jury.

DATED this 9th day of February 2021.

KRAEMER & LEWIS

By: s/ David C. Lewis

David C. Lewis, OSB No. 953348
Lauren E. Nweze, OSB No. 145218
Of Attorneys for Defendants